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SHOULD YOUR ESTATE PLAN INCLUDE A TRUST?

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One of the most common questions we receive from our estate planning clients, the vast majority of whom are farmers, is whether they need a trust for their estate plan. The answer, like most answers in the legal profession, is “it depends.” The following are circumstances when a trust is likely needed and when a simple will is adequate.

Until a few years ago, estate taxes were the primary factor in deciding between a trust and a will-based plan. The low threshold for Ohio estate taxes made trusts a near necessity for farmers. However, the legislature abolished estate taxes in 2013, so Ohio estate taxes are no longer a consideration. Federal estate taxes begin at \$5.34 million per person and \$10.68 million per married couple. Unless an individual’s net worth is approaching or over the federal estate tax exemption, a trust is not necessary to reduce federal estate taxes. Trusts can help reduce federal estate taxes for farmers exceeding the federal estate tax exemption.

Privacy is a benefit of trusts over wills. Wills are administered through the probate court and are required to be filed with the probate court. Anyone can go to the probate court and ask for a deceased person’s probate file which will include the will and an inventory of all the assets that went through the will. Trusts, on the other hand, are completely private. Only the trustee and the trust beneficiaries are entitled to see the trust. For some people, keeping their assets and distribution plans private is extremely important. If privacy is important, then a trust should be strongly considered.

Probably the most important factor, at least for our clients, in deciding between a trust and a will is the complexity of the plan. Wills and probate are better suited for people who have relatively simple estates with modest wealth. Most farmers have more

complex estates and distribution plans as well as substantially higher wealth than average. The most common need for complexity of plans is dealing with on-farm heirs and off-farm heirs. Through a trust, we often make special provisions for the on-farm heirs to lease land or buy land going to off-farm heirs, set up LLC’s for jointly-owned land, hold assets in trust for future generations and any number of other conditions. Attempting to administer a complex distribution plan through probate will be more onerous, burdensome and costly than administering the plan through a trust.

The primary advantage of a will-based plan over a trust-based plan is cost. Trust plans typically costs several thousand dollars more than will-based plans due to the complexity of trusts. Trusts also require maintenance every so often. So, the issue becomes, do the advantages of trusts justify

the additional costs? For most of our clients the answer is yes. Probably, 95 percent of our estate plans are trust-based because most clients find avoiding probate and allowing for more complex distribution plans are worth the additional costs. However, for those clients who opt for a will plan, we can still provide a very effective estate plan.

Determining the need for a trust must be done on a case-by-case basis. Each family and each farming operation is different. What works for one family and farm may not, and likely will not, work for another family and farm. We feel it is our responsibility as attorneys to help you decide what type of plan you need by providing the options available and clearly explaining the advantages and disadvantages of each. Ultimately, your estate plan is your decision and you are best suited to know what the best plan is for you. ■



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